

DISCLAIMER BY BOARD OF RILEY COUNTY COMMISSIONERS

It has become apparent there is a desire at the national and regional levels of the Department of Defense to encourage state legislatures to pass what are termed “encroachment” statutes-imposing development restrictions upon the landowners and communities surrounding military bases. H.B. 2169, introduced in the Kansas legislature this session by legislative sponsors without constituencies in Riley, Geary or Clay counties, is such an “encroachment” statute.

The Board of Riley County Commissioners would prefer that no “encroachment” statute be considered by the Kansas legislature. We believe such legislation is unnecessary because ongoing, constructive dialogue between Fort Riley, local governing bodies and private citizens is already occurring on multiple development issues.

However, our legislators tell us some sort of “encroachment” statute will inevitably be considered and acted upon by the Kansas legislature. If an “encroachment” statute is truly necessary, then the attached statutory language should be used because it emphasizes all of its provisions are permissive, rather than mandatory.

1 AN ACT concerning land use surrounding military installations; promoting communication,
2 cooperation and collaboration with municipalities and counties.

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4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1.

6 (a) Areas of this state that are wholly or in part within jointly developed community — military
7 Joint Land Use Study (JLUS) area, an Army Compatible Use Buffer (ACUB), an Air Installation
8 Compatible Use Zone (AICUZ) study area, or an Environmental Noise Management Plan
9 (ENMP) Noise Zone of an active duty, National Guard or reserve military installation shall
10 constitute a state area of interest vital to national security and the economic well being of the
11 state. It is the desire of the State of Kansas to promote communication, cooperation and
12 collaboration between military installations and municipalities and counties
13 adjacent to or surrounding military installations. To

14 further communication, cooperation and collaboration, military installations should:

- 15 • Notify municipalities and counties adjacent to or surrounding military
16 installations of any development, projects or operational changes on the installation
17 which will alter a JLUS, ACUB, AICUZ or ENMP or any of the elements therein;
- 18 • Notify municipalities and counties adjacent to or surrounding military
19 installations of any changes in contact persons
20 for the purposes of communication between the military installation and those
21 municipalities and counties;
- 22 • Meet with municipalities and counties adjacent to or surrounding military
23 installations annually for the purposes of
24 determining the critical areas within the state area of interest. A critical area of a state
25 area of interest is any portion of the state area of interest where future uses of the area
26 should be monitored and/or controlled to reduce potential conflicts with military
27 operations at the associated military installation.

28 To further communication, cooperation and collaboration, municipalities and
29 counties adjacent to or surrounding military installations should:

- 30 • Meet no less frequently than once annually with the commander of the active duty,
31 National Guard or reserve military installation associated with the state area of interest in
32 which the municipality or county is located to jointly determine what portion(s), if any,
33 of that state area of interest is a critical area;
- 34 • Provide written notice to installation commanders of adoption of regulations or
35 regulation amendments or adoption of or amendments to comprehensive planning
36 documents that effect the mutually agreed upon critical areas at least 60 days prior to
37 adoption of the documents, and a lack of response from the installation commanders so
38 notified shall be presumed to indicate such installation commander's approval;
- 39 • Provide written notice to commanders of development proposals affecting the agreed
40 upon critical areas before or concurrently with statutorily required notice for public
41 hearing to provide commanders an opportunity to assess impacts and coordinate issues
42 with planning staff;
- 43 • Evaluate and consider the impact of each of the following factors before making a final
44 decision regarding a development proposal (i.e. any development requiring a review
45 process prior to approval such as platting, rezoning conditional uses, special uses
46 variances or similar actions) within the agreed upon critical area:
 - 47 o The potential for release into the air of any substance that would impair visibility
48 or otherwise interfere with military operations, including ground operations,
49 such as steam, dust or smoke unless the substance is generated from agricultural use;

- o The potential for production of light emissions, either directly, or indirectly or by reflective light, that would interfere with pilot vision, and aerial or ground based night vision training;
 - o The potential for the production of electrical emissions that would interfere with military ground and aircraft communications and navigation equipment;
 - o The potential to attract birds or waterfowl including, but not limited to, operation of sanitary landfills and maintenance of large scale feeding stations;
 - o Whether or not structures are proposed within 10 feet of defined aircraft approach, departure, or transitional surfaces; or 100 feet beneath a low-level military aircraft training route as provided by the federal aviation administration;
 - o The potential to expose persons to noise greater than 65 DNL;
 - o The potential for obstructed visibility and/or surveillance of direct fire weaponry platforms into permanently populated or operational areas of military installations; and
 - o Whether or not there will be a violation of any federal aviation administration height restriction in title 14 of the code of federal regulations (14 CFR) part 77-- Objects Affecting Navigable Airspace or Department of Defense Instruction (DoDI) Number 4165.57 "Air Installations Compatible Use Zones."
- Ensure that all comprehensive plans or zoning ordinances/regulations affecting the mutually agreed upon critical areas of a state area of interest consider the most current jointly developed community – military JLUS and/or AICUZ recommendations sponsored by the United States Air Force installation located at McConnell Air Force Base located in Sedgwick County, Kansas, sponsored by the United States Department of the Army installations located at Fort Riley in/adjacent to Clay, Geary and Riley Counties, Kansas, and Fort Leavenworth in Leavenworth County, Kansas, or sponsored by the Kansas Adjutant General for Forbes Field in Shawnee County, Kansas, or the Smoky Hill facility located in Saline County, Kansas. All such comprehensive plans or zoning ordinances/regulations shall also consider the presence and effectiveness of any ACUB and the findings and recommendations of any AICUZ or ENMP.
 - Interpret such plans or ordinances/regulations in a manner that considers the recommendations or studies provided by the military with a view to protection of public health, safety, and welfare and maintenance of safe military and aircraft operations, and assure sustainability of installation missions.
 - Consider the adoption of a mandatory disclosure requirement for any property within the agreed upon critical areas of a state area of interest, which would inform buyers of the potential for impacts from noise, smoke, dust, light, electromagnetic interference and aircraft safety zones on the landowner produced by normal military operations
- Provide notice to commanders of all construction permits issued for improvements within the agreed upon critical area.
 - Provide the following written notice to individuals receiving a construction permit for improvements within the agreed upon critical area:

“The property for which this permit is issued is situated in an area that may be subjected to conditions resulting from military training at a nearby military installation. Such conditions may include the firing of small and large caliber weapons, the over flight of both fixed-wing and rotary-wing aircraft, the movement of vehicles, the use of generators, and other accepted and customary military training activities. These activities ordinarily and necessarily produce noise, dust, smoke and other conditions that may not be compatible with the permitted improvement according to established Federal guidelines, State guidelines or both.”

(b) Nothing herein shall prevent municipalities and counties adjacent to or surrounding military installations from entering into interlocal agreements with such military installations, in order to accomplish the objectives expressed herein.

Sec. 2. As used in section 2, and amendments thereto:

(a) "State Area of Interest Military Training Buffer Area" means land that is contiguous to a federal or state military facility of more than 100 acres as specified in the applicable AICUZ, JLUS, ACUB, or ENMP or is located adjacent to lands already in the program or is under a military flight path

(b) "Military Training Buffer Area Contract" means land in which the private owner voluntarily provides, sells, or leases the development rights for the land or provides, sells, or leases the right of the military to reject proposed development that will be incompatible with the training mission and operations of a federal or state military facility of more than 100 acres.

(c) Nothing in the State Area of Interest Military Training Buffer Area or Military Training Buffer Area Contract shall provide authority for the use of eminent domain.

Sec. 3.

(a) The Kansas Adjutant General may make available matching grants to be offered in cooperation with the United States Department of Agriculture under the farm and ranch land protection program or the United States Department of Defense, or any other federal or private entity, to eligible entities for the administration, purchase, or lease of permanent military training buffer contracts on eligible lands. Such costs shall include, but not be limited to, appraisals, surveys, title searches, and development right leases or rights.

(b) Any state funds made available to the Kansas Adjutant General for matching purposes shall be subject to appropriation.

(c) The Kansas Adjutant General may adopt rules and regulations to administer and implement the Military Training Buffer Area Contract program.

(d) The Kansas Adjutant General may contract with a third party to hold and administer Military Training Buffer Area Contracts. The Kansas Adjutant General shall adopt rules and regulations to identify and select such qualified third parties.

Sec. 4.

Notwithstanding the provisions of this act, the final decision on all planning, development, zoning and land use issues remains with the municipalities and counties adjacent to or surrounding military installations.